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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,875

12/01/2006

Kristen Briggs

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EXAMINER

WEN, SHARON X

ART UNIT

PAPER NUMBER

1644

MAIL DATE

DELIVERY MODE

04/04/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<i>Advisory Action Before the Filing of an Appeal Brief</i>	Application No. 10/536,875	Applicant(s) BRIGGS ET AL.	
	Examiner SHARON WEN	Art Unit 1644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112, first paragraph for not reciting antigen specificity.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: 75 and 76.
 Claim(s) rejected: 3-8, 11, 12, 25, 26, 38, 39, 42, 45, 48, 50, 52 and 53.
 Claim(s) withdrawn from consideration: 10, 67 and 68.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant's amendment and remarks have not been found convincing to overcome the rejection of record under 35 USC 103(a) as being unpatentable over Elbers et al. for reasons of record. The rejection of record can be located in the previous Office Action, mailed 01/24/2011. In response to Applicant's argument that Elbers did not teach the glycan profile recited in the present claims, i.e., 2Man, 2GlcNAc, 1Xyl, it is noted that the glycan recited in the claim does not specify the orientation or linkage of the sugar. Under the broadest reasonable interpretation and the open interpretation of "containing", the glycopeptide only needs to have 2 Mannoses, 2 N-acetylglucosamine and 1 xylose. Therefore structures I, J and K of Table 1 in Elbers read on the claimed glycan. Elbers taught various glycosylation patterns found in the antibodies expressed in plants and that different glycosylation patterns are relevant to the immunogenicity of the glycoproteins (see page 1315, first paragraph). Mayfield taught producing IgA in plants that are not glycosylated to reduce immunogenicity. In contrast to applicant's assertion that Mayfield taught the opposite of Elbers, the teaching by Mayfield strengthens the idea that altering glycosylation pattern, including reducing it to none, affects the immunogenicity of the antibody produced in plants. Therefore, one of ordinary skill in the art would have been motivated to develop antibodies with different glycan profile as Elbers has done for the purpose of optimizing immunogenicity of the antibody. Applicant's argument has not been found convincing and the rejection is maintained.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Sharon Wen/
Primary Examiner, Art Unit 1644

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20110329